IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2260 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	NO
2	To be referred to the Reporter or not?	NO
3	Whether Their Lordships wish to see the fair copy of the judgment?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?	NO
5	Whether it is to be circulated to the Civil Judge?	NO

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THAKKAR CHANDULAL HIRALAL - Appellant
Versus
AHEMADKHAN UMARKHAN PATHAN AND ANOTHER - Defendants

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Appearance :
MR KB PUJARA for the Appellant.
MR P. C. KAVINA WITH MR PADMRAJ K JADEJA for Respondent : 1.
Respondent 2 served.

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 17/12/2007

ORAL JUDGMENT

1. This appeal preferred under Section 30 of the Workmen Compensation Act, 1923 is directed against the judgment and order dated 06-12-2005 passed by the learned Commissioner, Workmen Compensation, Labour Court, Palanpur (***"the Commissioner"***, for

short) in Workmen Compensation Application No. 26-A of 1996 (***'the application"***, for short).

2. The short facts giving rise to the present appeal are as under:

The appellant was employed by the respondents and doing the business of transport of the goods. He was doing the work of loading and unloading of the goods parcels in the trucks and used to arrange them in the godown of the respondents to deliver the same to the concerned party. The appellant was paid a monthly salary of Rs. 1060/- by the respondents.

On 14-02-1995 at about 11 O'clock, while the appellant was engaged in doing the work during the course of employment, an insect entered his left eye and he suffered serious injury. He was immediately rushed to the dispensary in Palanpur and as he could not get the adequate relief in dispensary in Palanpur, he was, therefore, taken to the private hospital at Deesa on 17-02-1995. Even at Deesa, there was no relief to the appellant in the left eye and, therefore, he was taken to the Civil Hospital at Ahmedabad. He was admitted as an indoor patient in the Civil Hospital at Ahmedabad on 08-03-1995 and remained there till 27-03-1995. As there was no improvement in the eye-sight of the appellant, he ultimately lost the vision of the left-eye. Thus, the appellant had taken treatment of Eye Surgeons Dr. Prakash C. Parikh and Dr. Kishore K. Asnani of Mohan Eye Hospital, Deesa and M & J Institution of Opthamoloty, New Civil Hospital, Ahmedabad.

As the respondents-employers failed to pay the amount of

compensation which was due to the appellant, he was constrained to issue notice in October 1996 along with the draft-petition which was to be filed before the Labour Court to claim compensation of Rs. 42,347/- under the Workmen Compensation Act, 1923. As there was no reply from the respondents, the appellant filed Workmen Compensation Application No. 29 of 1996 in the Labour Court, Palanpur on 21-12-1996. During the course of hearing of the matter before the learned Commissioner, evidence was adduced on behalf of the appellant, and on perusal of the evidence adduced by the appellant, the learned Commissioner dismissed the application preferred by the appellant on 06-12-2005 .

3. Being aggrieved by the order passed by the learned Commissioner, the appellant has preferred the appeal under Section 30 of the Workmen Compensation Act.

4. Learned Advocate Mr. K. B. Pujara representing the appellant submitted that, while dealing with the oral deposition and the documentary evidence adduced by the appellant, the learned Judge framed the issues *vide* page 24 internal page 4 of the order passed by the learned Judge and after framing the issues, the learned Judge came to the conclusion that it is not in dispute that the appellant was employed by the respondents and he used to do the work of loading and unloading of the goods parcels in the trucks. It is also not in dispute that he was paid a monthly salary of Rs. 1060/- by the respondents. However, the learned Judge held that the appellant has not conclusively established that, because of insect, he suffered serious injury in the left eye and ultimately, lost the vision. The learned Judge further held that the appellant has also not proved that the injury was caused to him during the course of employment. However, the learned Advocate

appearing for the appellant submitted that on perusal of the deposition adduced by the appellant *vide* Annexure-C at Exh. 15, it becomes clear that the appellant suffered injury during the course of employment with the respondents. The learned Advocate submitted that initially, the appellant took the treatment at Palanpur and subsequently, at Deesa and Civil Hospital at Ahmedabad, but his vision gradually deteriorated and ultimately, he lost sight in the left-eye. The documents which are produced by the appellant vide Exhs. 17, 18, 19 and 20 further support the version of the appellant given in the deposition *vide* Exh. C. In view of the aforestated facts and circumstances, the learned Advocate submitted that, as the injury to the appellant had taken place during the course of employment with the respondents, the respondents are liable to pay compensation under the provisions of the Workmen Compensation Act, 1923 and the order passed by the learned Commissioner dismissing the claim of the appellant requires to be set aside. The learned Advocate has placed reliance on the following judgments in support of the submissions canvassed at the Bar:

(i) Bai Chandan, Widow of Ghanshyam Chhotalal Patel and Others Vs. Godhra Borough Municipality, 1974 GLR 376.

It is held by the Division Bench of this Court in this case that in the ordinary course of employment, the deceased had been attending to his work in the garden attached and appurtenant to the town-hall. While he had been performing his duties, the roof of the town-hall was displaced by stormy winds and rains. He, therefore, in order to protect interest of his master, climbed the roof of the town-hall to refix it. While he had been doing that work, he fell down from the top of the town-hall and suffered a fatal injury. Under the circumstances, the accident arose

out of employment, and therefore, the deceased was entitled to the benefit of the Workmen's Compensation Act.

(ii) Amubibi, Widow of Shekhamu Sheikhmahomed Vs. Nagri Mills Company Limited, 1977 GLR 681.

In this case, the workmen was suffering from coronary insufficiency. This Court, after going through the record of the case, held that, considering the common course of human conduct or common sense knowledge, coronary insufficiency is generally the consequence of strain, extra-work, fatigue. In the case of workman working on a loom in an artificial atmosphere of humidity, if he is shown to have died on account of coronary insufficiency one safely assume that it was the result of strain or fatigue caused by continuous work. In any event, if strain of work causes insufficiency, that strain itself would be cause of death and it would be personal injury suffered by an employer in course of employment within the meaning of Workmen's Compensation Act.

(iii) Smt. Jiviben Chana & Others Vs. Shah Karsan Lakha, 1983 (1) GLR 134.

In this case before our High Court, it was held as under:

"As the deceased was going to see the truck and at that time serpent bit him, this would clearly amount to an accident arising out of and in course of his employment. It was also held that the deceased was in the employment of the opponent. In view of this position, it is established that the applicants will be entitled to compensation under Section 3 of the Workmen's Compensation Act because from the

evidence on record, it is clearly established that the deceased met with the accident arising out of and in the course of his employment. It is difficult to imagine that merely because the deceased employee was returning after break-fast and at that time, the serpent bit him, the accident did not arise during the course of employment with the opponent."

Further, casual connection between the injury and accident was held to have been satisfactorily established by the evidence on record.

(iv) Divisional Railway Manager, Western Railway, Kota Vs. Smt. Shamsadi, 1988 LAB I. C. 605.

In this case, the Jaipur Bench of the Rajasthan High Court considered the provisions of Section 3 of the Workmen's Compensation Act and held that workmen was on duty when he was bitten by a scorpion. The medical treatment given to him during the operation performed on him. He subsequently developed titanus. The development of titanus, as per the decision of the High Court, was incident and consequential. The Workmen Compensation Act being social welfare legislation, beneficial interpretation was required to be given and, therefore, the workmen was entitled to compensation for death in harness due to accident by scorpion bite or mechanical injury caused.

(v) Smt. Rita Devi and Others Vs. New India Assurance Company Limited and Another, AIR 2000 SC 1930.

In this case, the deceased was a auto-rickshaw driver

employed by owner to drive auto-rickshaw for carrying passengers on hire. During the course of this duty, the passengers committed an act of felony of stealing the auto-rickshaw and murdered the auto-rickshaw driver. While considering the provisions of Section 163-A(1) of the Motor Vehicles Act, the Hon'ble Apex Court held that the death of the auto-rickshaw driver was an accident within the meaning of the Motor Vehicles Act. It was, therefore, held that the claimants, who were the wife and children of deceased driver, were entitled to compensation under the Act.

Thus, relying on the ratio laid down in the afore mentioned judgments, the learned Advocate submitted that it is a fit case to set aside the order passed by the learned Commissioner and award the compensation to the tune of Rs. 42,347/- which has been exhaustively narrated in the application at Exh. A, paragraph-5 before the learned Commissioner, Workmen Compensation, Labour Court along with interest at the rate of 18% from the date of petition till realization.

5. Learned Advocate Mr. P. C. Kevina for the respondents vehemently submitted that the appellant has not proved the nature of the injury sustained by him during the course of employment. It is true that the insect had entered the left eye of the appellant and he had to take long treatment and as the treatment did not yield the desired result, he lost the vision of left eye. The learned Advocate submitted that there is no medical evidence worth the name to pinpoint the injury sustained by the appellant and the subsequent deterioration in his vision. The learned Advocate further submitted that no evidence is adduced by the appellant to say that the incident had occurred during the course of employment and, therefore, it is a case wherein the appellant lost the vision of the left eye, but since the appellant has not established that the

incident in question had taken place during the course of employment, the learned Judge has rightly rejected the application preferred by the appellant and, therefore, there is no question of interference in the appeal filed by the appellant under Section 30 of the Workmen Compensation Act and the appeal deserves to be dismissed. The learned Advocate also placed reliance on the deposition adduced by the appellant produced *vide* Exh. C as well as the documents produced *vide* Exhs. 17, 18, 19 and 20 in support of the submission that save and except the deposition of appellant, no other supporting evidence is produced by the appellant to prove his case and, therefore, the learned Judge has rightly rejected the application preferred by the appellant. Thus, taking into consideration the record and proceedings of the case, it is not a fit case to interfere with the order passed by the Commissioner, Workmen Compensation Act and, therefore, the appeal requires to be dismissed.

6. Heard learned Advocate Mr. K. B. Pujara for the appellant and learned Advocate Mr. P. C. Kavina for the respondents at length and in great detail. I have perused the record and proceedings of the Workmen Compensation Application No. 29 of 1996. I have also carefully considered the judgments cited by learned Advocate for the appellant and there is no dispute about the ratio or proposition laid down in those judgments.

7. The first contention raised by the learned Advocate for the respondents is that the appellant has not proved the nature of injury. However, considering the deposition adduced by the appellant and the treatment papers produced *vide* Exhs. 17, 18, 19 and 20, the appellant, in my view, has proved that the nature of injury caused to him during the course of employment. The deposition makes it abundantly clear that

he had sustained the injury during the course of employment. Thus, this contention canvassed by the learned Advocate for the respondents is liable to fail.

The appellant, who was in the employment of the respondents and was doing the work of loading and unloading of goods parcels in the trucks, suffered injury in the left eye on 14-02-1995. The injury took place when the appellant was doing the work of his employer and at the material point of time, an insect entered his left eye and the appellant suffered injury. He was rushed to the local dispensary in Palanpur and as there was no relief, he immediately took the treatment at Deesa Hospital and subsequently, he was taken to the Civil Hospital at Ahmedabad where he was admitted as an indoor patient from 08-03-1995 to 27-03-1995. As there was no improvement in the vision of the appellant, he ultimately lost the sight of the left eye. He gave the notice to the respondents somewhere in October 1996 to pay the amount of compensation because of loss of vision in the left eye but the request made by the appellant was not considered by the respondents and, therefore, he had approached the Hon'ble Labour Court by filing Workmen Compensation Application No. 29 of 1996.

On perusal of the deposition adduced by the appellant, it becomes clear that he had sustained the injury during the course of employment and as a result of which, ultimately, even after prolonged treatment, he lost his vision in the left eye. I have also perused the treatment papers produced *vide* Exhs. 17, 18, 19 and 20 which are in support of the deposition adduced by the appellant. It has been contended by the learned Advocate on behalf of the respondents that no medical evidence worth the name is produced by the appellant in support of the oral deposition. However, considering the deposition

adduced by the appellant and the treatment papers at Exhs. 17, 18, 19 and 20, it becomes clear that the appellant had produced medical certificates and the treatment papers after sustaining injury during the course of employment. Therefore, in view of the aforesaid facts and circumstances of the case, there is no substance in the contention raised by the learned Advocate for the respondents.

It is also contended by the learned Advocate that the appellant has not produced evidence to show that the incident had taken place during the course of employment, but on perusal of the deposition adduced by the appellant at Annexure C, it becomes clear that the incident had taken place during the course of employment and after sustaining the injury in the left eye, further deterioration had taken place in the left eye and ultimately, the appellant lost his vision. Thus, this contention of the respondents is also liable to be rejected.

Thus, taking into consideration the evidence adduced by the appellant and on perusal of the record and proceedings, the appellant has established that the injury had taken place during the course of employment. The injury sustained by the appellant in the left eye got deteriorated and in spite of the treatment being taken by him, there was no improvement in the vision. The appellant, ultimately, lost the sight of the left eye as a result of the injury sustained by him during the course of employment. Thus, the appellant, in my considered view, is entitled to claim compensation as set out by him in paragraph 5 of the application preferred before the learned Commissioner. More so, when it is well settled that the Act is a piece of social security and welfare legislation and the dominant purpose of the Act is to protect the workmen and, therefore, the provisions of the Act are required to be interpreted in a lenient manner as it is a benevolent legislation.

8. For the foregoing discussion, I pass the following order:

ORDER

The appeal is allowed. The judgment and order dated 06-12-2005 in Workmen Compensation Application No. 26-A of 1996 passed by the learned Commissioner, Workmen Compensation, Labour Court, Palanpur is hereby quashed and set aside. The appellant will be paid entitled to get compensation as claimed by him to the tune of Rs. 42,347/- as set out in paragraph 5 of his application with interest at the rate of 12% p.a. from the date of petition till realization. The payment is to be made by the respondents by 31st January, 2008. No order as to costs. Decree to be drawn accordingly.

[H. B. ANTANI, J.]

/shamnath